IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WA.No. 1378 of 2007

AGAINST THE JUDGEMENT IN WPC.15799/2004 Dated 26/02/2007
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APPELLANT: RESPONDENTS 4,5 & 6:
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1. THE TRICHUR CO-OPERATIVE SPINNING MILLS LTD., VAZHANI P.O., THRISSUR-680 589, REPRESENTED BY THE MANAGING DIRECTOR.
2. THE CHAIRMAN, TRICHUR CO-OPERATIVE SPINNING MILLS LTD., VAZHANI P.O., THRISSUR-680 589.
3. THE MANAGING DIRECTOR, TRICHUR CO-OPERATIVE SPINNING MILLS LTD., VAZHANI P.O., THRISSUR-680 589.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

RESPONDENTS: PETITIONER & RESPONDENTS 1-3:
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1. K. BABU SURESH, KARUVATH HOUSE, MANKULANGARA P.O., KODAKARA, TRICHUR-680 684, LAB IN-CHARGE, TRICHUR CO-OP. SPINNING MILLS LTD.
2. STATE OF KERALA, REPRESENTED BY SECRETARY, INDUSRIES DEPARTMENT, SECRETARIAT, TRIVANDRUM.
3. THE SECRETARY TO GOVERNMENT, CO-OPERATIVE DEPARTMENT, TRIVANDRUM.
4. THE DIRECTOR OF HANDLOOM, GOVERNMENT OF KERALA, TRIVANDRUM.

R1 BY ADV. SRI THAMPAN THOMAS
R4 BY GOVT. PLEADER SRI SANDESH RAJA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20/06/2007, ALONG WITH WA NO. 1391 OF 2007 WA NO. 1382 OF 2007 WA NO. 1405 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

W.A. Nos. 1378, 1382, 1391 and 1405 of 2007

Dated: 20th June 2007

JUDGMENT

Radhakrishnan, J.

Writ Appeal Nos. 1378 and 1405 of 2007 arise out of the judgment in W.P.C. No 15799 of 2004 and Writ Appeal Nos. 1382 and 1391 of 2007 arise out of the judgment in W.P.C. No 12686 of 2006.

2. W.P.C. No 15799 of 2004 was preferred by the employee seeking a writ of mandamus directing respondents 5 and 6 to reinstate him in service and to pay the backwages from 24.01.2000 and also for other consequential reliefs. W.P.C. No 12686 of 2006 was also filed the same employee seeking a writ of certiorari to quash Ext. P3 order of the second respondent to show cause why imposition of punishment shall not be inflicted on him and for a direction to the respondents to comply with Exts. P1 and P2 judgments and also for other consequential reliefs.

3. Petitioner was working as Lab-in-charge in a co-operative

spinning mill. Disciplinary proceedings were initiated against him and after conducting an enquiry he was dismissed from service on 24.01.2006 by the Managing Director of the spinning mill. That order was challenged before this court by filing O.P. No 3255 of 2001 contending that the Managing Director had no jurisdiction to issue the order of dismissal. Original petition was allowed by this court on 05.01.2004 setting aside the order passed by the Managing Director and declaring that the Society would be free to pass fresh orders in the disciplinary proceedings initiated against the employee. Employee was not reinstated on the basis of the order passed by this court. Later he filed representation before the respondents requesting for reinstatement in service. Since no action was taken by the Society to reinstate him, he filed W.P.C.No 15799 of 2004 for reinstatement with backwages. During the pendency of the writ petition, against the judgment in O.P. No 3255 of 2001, Writ Appeal No 377 of 2005 was filed before this court. An amount of Rs 50,000/- was paid by virtue of the interim order passed by this court in W.P.C. No 15799 of 2004. Writ Appeal No 377 of 2005 was later dismissed by this court on 04.03.2006.

4. Later, Chairman of the spinning mill issued Ext. P3 show

cause notice stating that the charges levelled against the petitioner were proved and it was proposed to impose the punishment of dismissal from service with effect from 30.12.2000. Petitioner was directed to file his objection/explanation against the proposal for dismissal. That was challenged before this court in W.P.C. No 12686 of 2006. Learned single judge disposed of ;both the writ petitions by judgment dated 26.02.2007. Rejecting the request for reinstatement it was held that the employee would be entitled to subsistence allowance as applicable under law, after adjusting the amounts already paid pursuant to the interim order passed in W.P.C. No 15799 of 2004.

5. Counsel appearing for the employee submitted that the Chairman has no jurisdiction to pass the order of punishment. Counsel also submitted that the show cause notice was also not in order and the employee is entitled to get subsistance allowance in accordance with law. Proposal to impose punishment was earlier set aside by this court and thereafter Chairman has issued Ext.P3 order. We therefore direct the District Labour Officer concerned to determine the amount of subsistance allowance payable to the employee provided the employee makes a claim to that effect. In

case the employee makes a claim it is open to the Management to file objections against such claim in the event of which District Labour Officer will consider the same and pass appropriate orders in accordance with law. It is open to the Management to raise all their contentions before that officer except the plea of limitation. On a direction given by this court a sum of Rs 50,000/- has already been paid to the employee. That also will be taken into consideration by the District Labour Officer while quantifying the amount of subsistance allowance to be paid to the employee. Writ appeals are disposed of as above.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

20/06/2007
en

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